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IN THE

Supreme Court of the United States

October Term 1952

No. 368

THE DE LA RAMA STEAMSHIP COMPANY, INC.,
Petitioner,
against
UNITED STATES OF AMERICA

On petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

REPLY MEMORANDUM FOR PETITIONER

We have noted that the United States does not oppose the granting of a writ of certiorari in this case limited to the question of the jurisdiction of the district court.

The United States has not only acquiesced in petitioner's application but seems (Memorandum 2-3) to agree fully with our position that the decision of the Second Circuit is erroneous and that its judgment should be reversed.

We disagree, however, with the contention made by the United States that the interest question (Petition 15) is not appropriately presented for consideration by this Court on the ground, as alleged, that it "was not considered by the court below and the decision of the district court is not alleged to be in conflict with the decision of any other court on the question" (Memorandum 1).

To the contrary, our reference on page 15 of the Petition to petitioner's assignment of error in the Court of Appeals as to interest ("R. Vol. II 1547") should be coupled with our citation there (Petition 15) of several controlling decisions by this Court ("*United States* v. *Thayer-West Point Hotel Co.*, 329 U. S. 585, 589-590; *Albrecht* v. *United States*, 329 U. S. 599; * * * *Jacobs* v. *United States*, 290 U. S. 13, 16-17; *Phelps* v. *United States*, 274 U. S. 341, 343-344"). Thus would appear to be constituted an unmistakable allegation not only that the question of constitutional interest had been presented to the court below, but also that the decision of the district court was directly in conflict with those controlling decisions of this Court. Said decisions had been cited in our brief in the Court of Appeals and relied on in our oral argument there. They were also relied on by us both in our brief and oral argument in the district court, but appear to have been disregarded in its decision (R. 893-894).

Therefore objection of the United States to consideration by this Court of the interest question on the ground that there is no alleged conflict of decisions, would appear to be without foundation.

We earnestly submit that it would be most appropriate in the interest of justice and fair expedition (as set forth in the Petition 15) for this Court to determine finally the question of constitutional interest along with the jurisdictional question which both sides believe this Court should review.

Respectfully submitted,

ROSCOE H. HUPPER
Counsel for Petitioner
The De La Rama Steamship Company, Inc.

New York City
November 7, 1952.